No. 88-2041

(8)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

In the Matter of:

The Complaint of Everett A. Sisson, as owner of the motor yacht the ULTORIAN, for exoneration from or limitation of liability,

EVERETT A. SISSON,

Petitioner,

—v.—

BURTON B. RUBY, FIREMAN'S FUND INSURANCE COMPANY, and PORT AUTHORITY OF MICHIGAN CITY, Claimants,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, AS *AMICUS CURIAE*, IN SUPPORT OF PETITIONER

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MOTION BY THE MARITIME LAW ASSOCIATION OF THE UNITED STATES TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER

Applicant, The Maritime Law Association of the United States ("MLA"), moves the Court for permission to file an *amicus curiae* brief in support of the petitioner Everett A. Sisson. Petitioner has given consent, but Respondents have not (although they gave such consent with respect to the petition for writ of certiorari), and leave to file must be sought pursuant to rule 37.4.

NATURE OF APPLICANT'S INTEREST

MLA has a very strong interest in the disposition of this case. It is a nationwide bar association founded in 1899, having a membership of about 3400 attorneys, federal judges, law professors and others interested in maritime law. It is affiliated with the American Bar Association and is represented in that Association's House of Delegates.

MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests—shipowners, boatowners, charterers, cargo owners, shippers, forwarders, terminal operators, port authorities, seamen, longshoremen, passengers, marine insurance underwriters and others.

MLA's purposes are stated in its Articles of Association:

> The objectives of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to promote uniformity in its enactment and interpretation, to furnish a forum for its discussion and consideration of problems affecting the Maritime Law and its administration, to participate as a constituent member of the Comite Maritime International and as an affiliated organization of the American Bar Association, and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices in different nations.

In furtherance of these objectives MLA, during the ninety years of its existence, has sponsored a wide range of legislation dealing with maritime matters and has also cooperated with Congressional committees in the formulation of other maritime legislation.[1]

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1 E.g., Water Quality Improvement Act of 1970, 33 U.S.C. §§ 1161-1175; 1972 Water Pollution Control Act Amendments, 33 U.S.C. §§ 1251-1376; implementation of the 1972 Convention for Preventing Collisions at Sea, 28 U.S.T. 3459, T.I.A.S. 8587, U.N.T.S. 15824, as amended, T.I.A.S. 10672, *reprinted* in 6 Benedict on Admiralty, Doc. No. 3-4 at 3-34.1-78.2 (7th ed. .988), see C.F.R. ch. 1, subch, D, Special Note at 160 (1987); Federal Court Jurisdiction Bill, S. 1876, 93d Cong., 1st Sess. (1973); United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073; Shipowner's Limitation of Liability Bill, H.R. 277, 99th Cong., 1st and 2nd Sess. (1985, 1986).

MLA believes uniformity in maritime law is of great importance. This concern has been repeatedly expressed by its membership and standing committees. For example, in 1975 the MLA Standing Committee on Uniformity of Maritime Law recommended that steps be taken to persuade Congressional committees "that nationwide and, in fact, world-wide uniformity in the Maritime Law is highly desirable, not only from the standpoint of those involved with maritime commerce but from that of the public as well." A resolution to that effect was unanimously adopted on April 25, 1975.[2] A substantially identical resolution was adopted by the American Bar Association in 1976. This policy has been reaffirmed by the MLA on several occasions, most recently in a 1986 resolution.[3]

MLA has, in furtherance of the uniformity policy and resolutions, filed *amicus* briefs in a number of cases, including four accepted by the United States Supreme Court.[4]

It is the policy of MLA to file briefs as *amicus curiae* only when important issues of maritime law are involved and the Court's decision may substantially affect the uniformity of maritime law.

Such a situation exists in this case. The Seventh Circuit Court of Appeals has severely limited admiralty and maritime

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2 MLA Minutes, MLA Doc. No. 588 at 6397-98 (1975).

3 MLA Minutes, MLA Doc. No. 669 at 8769 (1986).

4 *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 108 S.Ct. 1684, 100 L.Ed. 2d 127 (1988); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973). For a complete listing, see MLA Report, MLA Doc. No. 671 at 8862-63 (1987).

jurisdiction in a way which too narrowly construes the decisions of this Court in *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249, (1972) and *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982). In failing to follow *Richardson v. Harmon*, 222 U.S. 96 (1911), it would also have the effect of denying a vessel owner his right to seek limitation of liability, which can properly be sought only in a federal district court. Both aspects of the *Sisson* decision would adversely affect uniform interpretation and application of the admiralty and maritime law.

Moreover, in granting certiorari, the Court requested that the parties brief and argue whether the Court should reconsider its decision in *Richardson v. Harmon, supra*. In connection with that request, MLA considers that *Richardson* should not be disturbed. MLA has reason to believe that respondents would oppose retention of the *Richardson* doctrine and that petitioner, while favoring retention, might not sufficiently address its place and importance in the limitation of liability scheme and in the context of this Court's decisions.

MLA CAN MAKE A UNIQUE CONTRIBUTION ON RELEVANT ISSUES.

MLA's perspective, arising from its interest in the uniformity and predictability of U.S. maritime law, necessarily is different from those of the parties to this particular suit, who are most interested in its outcome as it affects their individual positions. MLA can therefore most effectively treat the need for a decision by this Court which would foster national uniformity and stability on the issues presented.

Dated: March 8, 1990

Respectfully submitted,

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BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, AS *AMICUS CURIAE*, IN SUPPORT OF PETITIONER

The Maritime Law Association of the United States ("MLA") respectfully submits this brief as *amicus curiae* in support of the Petitioner Everett A. Sisson.

QUESTIONS PRESENTED

1. Whether a fire on board a non-commercial vessel docked at a recreational marina on navigable waters bears a significant relationship to traditional maritime activity in order to bring it within the admiralty and maritime jurisdiction of the District Court pursuant to 28 U.S.C. § 1333 and Article III, Section 2, of the Constitution.

2. Whether the Limitation of Liability Act, 46 U.S.C. § 181 *et seq.*, provides a source of admiralty jurisdiction separate and apart from jurisdiction under 28 U.S.C. § 1333.

a. At the Court's request, whether the Court should reconsider the decision in *Richardson v. Harmon*, 222 U.S. 96 (1911).

NATURE OF MLA'S INTEREST

This is stated in the Motion which precedes this Brief.

SUMMARY OF ARGUMENT

The Seventh Circuit construed *Executive Jet* and *Foremost* far too narrowly by limiting the requisite traditional maritime activity to navigation for recreational vessels. Moreover, the Seventh Circuit's tests would be uncertain of application and would impair uniformity. To eliminate the divergence among circuits, we submit this Court should, if practicable, announce a rule for determining admiralty and maritime jurisdiction.

The Seventh Circuit erroneously failed to follow the applicable precedent of *Richardson v. Harmon*, 222 U.S. 96 (1911), under which there is jurisdiction in a limitation proceeding of non-maritime as well as maritime torts. *Richardson* was soundly decided, both in respect of statutory interpretation and in relation to other decisions of this Court. It should not be reconsidered.

The limitation of liability statutes apply to recreational vessels.

ARGUMENT

A. The Seventh Circuit Erroneously Construed *Executive Jet* and *Foremost* Too Narrowly, Thereby Unjustifiably Denying Admiralty and Maritime Jurisdiction.

Prior to 1972 this case clearly would have been within admiralty jurisdiction inasmuch as the casualty occurred on navigable waters. *The Plymouth*, 70 U.S. (3 Wall.) 20, 36 (1866). However, in *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249 (1972), a case involving an airplane crash in Lake Erie, which bore "no relationship to traditional maritime activity," *id.* at 273, this Court held:

> [I]n the absence of legislation to the contrary, there is no federal admiralty jurisdiction over aviation tort claims arising from flights by land-based aircraft between points within the continental United States.

Id. at 274. The Court noted that the Death on the High Seas Act might be "legislation to the contrary" in an appropriate case. *Id.* n.26.

In *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982), a case involving a collision of two pleasure boats on navigable waters, this Court recognized that the requirement that the wrong have a significant connection with traditional maritime activity is not limited to aviation and there is no requirement that the maritime activity be exclusively commercial. Because the "wrong" in *Foremost* involved negligent operation of a vessel on navigable waters, the court believed there was a significant nexus to traditional maritime activity to sustain admiralty jurisdiction. *Id.* at 674. It concluded:

> In light of the need for uniform rules governing navigation, the potential impact on maritime commerce when two vessels collide on navigable waters, and the uncertainty and confusion that would necessarily accompany

> a jurisdictional test tied to the commercial use of a given boat, we hold that a complaint alleging a collision between two vessels on navigable waters properly states a claim within the admiralty jurisdiction of the federal courts.

Id. at 677.

In *Sisson*, in view of the many references to "navigation" or "operation" of a vessel in *Foremost*, the Seventh Circuit said there is a reasonable basis to conclude that this Court intended to limit admiralty jurisdiction in non-commercial maritime tort cases to torts involving navigation. 7a-8a.[1] It interpreted *Foremost* to confine admiralty jurisdiction in tort cases either to cases directly involving commercial maritime activity or to cases involving exclusively non-commercial activities in which the wrong (1) has a potentially "disruptive impact" on maritime commerce *and* (2) involves the "traditional maritime activity" of navigation. 8a, 11a-12a. It concluded that part (1) of its test had been met in that a fire on a moored vessel could disrupt commercial navigation but, as navigation was not involved, there was no jurisdiction. 8a, 11a-12a.

The Seventh Circuit conceded that it applied a narrow reading to "traditional maritime activity" in limiting its application to cases involving navigation. It admitted that strong arguments exist for a broader interpretation and that, logically, fires aboard moored vessels are as much a traditional maritime concern as errors of navigation. 9a.

The Seventh Circuit also expressed puzzlement at *Foremost's* frequent use of the phrase "traditional maritime activity" in discussions dealing with navigation, but apparently concluded that "traditional maritime activity" is equated

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1 The case is reported as *Complaint of Sisson*, 867 F.2d 341 (7th Cir. 1989), but for convenience our page citations to the Seventh Circuit's opinion (and our later references to the limitation statutes) refer to the Petition's Appendix.

only to "maritime commerce," "navigation," or "operation of a vessel." 9a, 11a.

We respectfully submit that the Seventh Circuit relied too much on this Court's focus on "navigation" in *Foremost* which, after all, as a collision case, was necessarily concerned with navigation as the obviously relevant traditional maritime activity. And we suggest that the Seventh Circuit gave excessive weight to only the first sentence of a *Foremost* footnote in determining ultimately to require "navigation" as a necessary "second *Foremost* criterion" requirement for jurisdiction. 8a, 9a. The full footnote from *Foremost* on which the Seventh Circuit relied reads as follows:

> Not every accident in navigable waters that might disrupt maritime commerce will support federal admiralty jurisdiction. In *Executive Jet*, for example, we concluded that the sinking of the plane in navigable waters did not give rise to a claim in admiralty even though an aircraft sinking in the water could create a hazard for the navigation of commercial vessels in the vicinity. ***However, when this kind of potential hazard to maritime commerce arises out of activity that bears a substantial relationship to traditional maritime activity, as does the navigation of the boats in this case, admiralty jurisdiction is appropriate.***

457 U.S. at 675, n.5 (emphasis added). In context, the last sentence of the note makes it reasonably plain that "the navigation of the boats in this [*Foremost*] case" was merely the pertinent traditional maritime activity therein, rather than the only one that could possibly suffice, as the Seventh Circuit concluded.

Certainly, the natural meaning of "traditional maritime activity" is broader than the Seventh Circuit utilizes in *Sisson*, as that Court itself recognized. 9a. In the context of *Sisson* numerous traditional maritime activities or concerns, actual and potential, are involved, namely: mooring a vessel; seaworthiness—here involving preventing or detecting fire in a vessel; preventing fire from spreading internally; and pre-

venting its spreading to other vessels or the dock, perhaps by moving the burning vessel or the nearby vessels (possibly arranging towage for such a move or, indeed, salvage services). All of these are clearly traditional maritime activities. *A fortiori*, each of them, e.g., mooring a vessel, is clearly an "activity that bears a substantial relationship to traditional maritime activity," in *Foremost*'s words, italicized above.

Coupled with the Seventh Circuit's conclusion that the fire "could disrupt" commercial navigation [criterion (1)—*Foremost*'s "potential hazard to maritime commerce," *supra*], we submit that any one, or a combination, of the aforesaid traditional maritime activities should have sufficed to ground maritime jurisdiction under *Foremost*, unless the Seventh Circuit was correct when it inferred that "navigation" was a *sine qua non*.

We respectfully submit that, in so inferring, the Seventh Circuit erred. In that respect Judge Ripple would agree. 21a.[2]

B. The Seventh Circuit's Approach Would Be Difficult to Apply, Would Discourage Uniformity, and Should Be Rejected.

The difficulties inherent in the Seventh Circuit's test are illustrated by the *Sisson* opinions themselves—the Panel splitting 2–1 on two issues: (a) whether the fire had a potentially disruptive impact on maritime commerce and (b) whether navigation was the required traditional maritime activity.

Judge Ripple concluded the fire presented no harm to maritime commerce because it occurred in a marina dedicated exclusively to the wharfage of pleasure boats. 21a. But would his view have changed if some of those pleasure boats were regularly chartered out for hire (a commercial activity)? Or if a dock with commercial vessels had been immediately adjacent? Or 200 yards away? Would the size of the fire or the

2 Judge Ripple concurred in the result because he thought the fire presented no harm to maritime commerce, 21a, but, as the majority pointed out, *inter alia*, the fire could have spread from the marina across oil-covered water to threaten or obstruct commercial traffic. 8a.

direction of wind or current be a factor in whether harm was presented?

Such questions illustrate the uncertainty of the *Sisson* approach and its dependence on fortuitous circumstances which would lead to inconsistent findings or denials of admiralty jurisdiction, prejudicial to uniformity. *Foremost* wisely warned against such tests and declined to inject the uncertainty inherent in such line-drawing into maritime transportation. 457 U.S. at 675-676. The *Sisson* approach should be rejected.

C. In View of the Divergence among Circuits on the Question of Jurisdiction it Would Promote Uniformity if this Court would Announce a Clearer Standard for Determining Admiralty and Maritime Jurisdiction.

There is considerable divergence among the Circuits on the test for determining admiralty and maritime jurisdiction.

In *Kelly v. Smith*, 485 F.2d 520, 525 (5th Cir. 1973), *cert. denied*, 416 U.S. 969 (1974), the Fifth Circuit established a four factor test for determining admiralty jurisdiction: (a) the functions and roles of the parties, (b) the types of vehicles and instrumentalities involved, (c) the causation and the type of injury, and (d) traditional concepts of the role of admiralty law. The Seventh Circuit in *Sisson* expressly refused to adopt the "four factor test" although acknowledging its use in the Fourth, Fifth, Ninth and Eleventh Circuits. 8a, n.2.

Without abandoning *Kelly v. Smith*, the Fifth Circuit has added three other indicia "divined from *Executive Jet* and *Foremost*" in determining jurisdiction: (1) impact of the event on maritime shipping and commerce, (2) desirability of a uniform national rule to apply to the matter, and (3) the need for admiralty "expertise." *Molett v. Penrod Drilling Co.*, 826 F.2d 1419, 1426 (5th Cir. 1987).

The Eighth Circuit probably has given the broadest test of admiralty jurisdiction with respect to pleasure boat torts in

St. Hilaire Moye v. Henderson, 496 F.2d 973, 979 (8 Cir. 1974), *cert. denied*, 419 U.S. 884 (1974), where it stated:

> [T]he operation of a boat on navigable waters, no matter what its size or activity, is a traditional maritime activity to which the admiralty jurisdiction of the federal courts may extend.

Other courts have viewed *Foremost* as requiring consideration of a range of factors, including, but not limited to, navigation. In *Complaint of Sheen*, 709 F. Supp. 1123, 1129 (S.D. Fla. 1989), the Court, in discussing the scope of admiralty jurisdiction, stated:

> Generally, a determination of maritime flavor requires a consideration of three issues: (1) the impact upon maritime shipping and commerce; (2) the desirability of a uniform national rule, and, (3) the need for one central admiralty authority.

The court cited *Foremost* for the foregoing and noted that courts after *Foremost* have found its directives too abstract and have generally followed the guidelines of *Kelly v. Smith*, *supra* 9. *Ibid*.

The Sixth Circuit has criticized *Sisson's* "indefensibly narrow reading of *Foremost*." *In re John Young*, 872 F.2d 176, 179, n.4 (6th Cir. 1989). And in *Sisson* itself, Judge Ripple invited further guidance from this Court. 23a.

We respectfully suggest that, minimally, this Court should rule that the requirement that the wrong have a significant connection with a traditional maritime activity is not limited to navigation as an activity but includes other activities including mooring; and the situation in *Sisson*, where a fire on a moored vessel spread to other vessels and the marina, is within the admiralty and maritime jurisdiction. However, such a ruling could still leave areas of doubt. Accordingly, if a broader test is deemed desirable (and for uniformity's sake we submit that it is) we would suggest: the admiralty and maritime jurisdiction should include all cases where the

"wrong" has a significant connection with any maritime use (active or passive) of a vessel (as defined in 1 U.S.C. § 3, i.e., "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water") on navigable waters. We respectfully submit that such a standard would be appropriate and could be uniformly applied.

D. The Seventh Circuit also Erred in Denying Jurisdiction which is Based on Applicability of the Limitation of Liability Act.

Even if there were no admiralty and maritime jurisdiction under more general principles, there is jurisdiction by virtue of the action being brought under the Limitation of Liability Act, 46 U.S.C. §§ 183 *et seq*.

In *Richardson v. Harmon*, 222 U.S. 96 (1911), this Court held that a vessel owner was entitled to seek limitation of liability with respect to a non-maritime tort, by virtue of what is now 46 U.S.C. § 189. 46a. Accordingly, on the authority of *Richardson*, even if the claims against the ULTORIAN's owner are non-maritime torts, he is still entitled to seek limitation of liability, and the only court in which he may do so is the district court.

Sisson's reasoning, 17a-20a, concerning the changed circumstances due to the nexus requirement having later been added to the locality requirement is beside the point. *Richardson* plainly held that even though, but for the Limitation of Liability Act, there would have been no admiralty jurisdiction (the tort being non-maritime), the Act sufficed to put the case under district court jurisdiction in admiralty. The same principle is true today, even though the general test for admiralty and maritime jurisdiction has been modified.

If there were no ordinary admiralty and maritime jurisdiction, the Limitation of Liability Act would be "legislation to the contrary" of the type referred to in *Executive Jet* quoted *supra* at 3, which would bring the case within such jurisdiction. In any event, we respectfully submit that the vessel

owner's right to seek to limit liability, an admiralty concern (*Executive Jet, supra*), combined with the traditional maritime activities here involved require the exercise of admiralty and maritime jurisdiction in this case.

E. *Richardson v. Harmon*, 222 U.S. 96 (1911), Was Soundly Decided, Has Long Been Followed, and Should Not be Modified.

The Court has requested that the parties address the question whether *Richardson* should be reconsidered. We respectfully submit that reconsideration is not required but, if given, the decision should be left undisturbed.

In considering *Richardson* it is pertinent to review material decisions of this Court which preceded it.

In a leading early case, *Norwich Company v. Wright*, 80 U.S. (13 Wall.) 104 (1871), this Court pointed out that while the limitation act did not prescribe what court should be resorted to, no court was better adapted than a court of admiralty to administer such [limitation] relief, and went on to say:

> Congress might have invested the Circuit Courts of the United States with the jurisdiction of such cases by bill in equity, but it did not. It is also evident that the State courts have not the requisite jurisdiction. Unless, therefore, the District Courts themselves can administer the law, we are reduced to the dilemma of inferring that the legislature has passed a law which is incapable of execution. This is never to be done if it can be avoided. We have no doubt that the District Courts, as courts of admiralty and maritime jurisdiction, have jurisdiction of the matter; and this court undoubtedly has the power to make all needful rules and regulations for facilitating the course of proceeding.

Id. at 123-24. In thereafter describing the proper course for pleading a limitation action in the District Court so as to effectively bar other actions in state courts, the Court said:

> The Court having jurisdiction of the case, under and by virtue of the act of Congress, would have the right to enforce its jurisdiction and to ascertain and determine the rights of the parties. For aiding parties in this behalf, and facilitating proceedings in the District Courts, we have prepared some rules which will be announced at an early day.

Id. at 125. Those rules were duly issued as part of the admiralty rules, and their current successor, Fed.R. Civ. P. Supplemental Admiralty Rule F, remains in effect. Since *Norwich* the courts have consistently held that limitation of liability proceedings are to be filed in the District Court, in admiralty.

Ex parte Phenix Insurance Co.,118 U.S. 610 (1886), concerned a petition filed in district court by a Wisconsin corporation, which owned a steamer, to limit its liability for damage caused in 1880 to buildings on land in Wisconsin by fire alleged to have been negligently started by sparks from the steamer's smoke-stack. The vessel owner had been sued in the Wisconsin state courts before filing the petition. The question was whether the district court had jurisdiction, inasmuch as under *The Plymouth*, 70 U.S. (3 Wall.) 20 (1865), there was no general admiralty jurisdiction, the tort being consummated on land.

Phenix quoted the Limitation Act as it then stood, without the 1884 amendment (now U.S.C. § 189) which expressly did not apply to liabilities arising before its passage. It found that the Limitation Act did not purport to confer any jurisdiction upon a district court and made provision

> only that the trustee may "be appointed by any court of competent jurisdiction," leaving the question of such competency to depend on other provisions of law.

Id. at 617.

It went on to state:

> As there is no foundation in the general admiralty jurisdiction of the District Court, for its assumption of jurisdiction in this case, *and none in the special provisions of the statute for the limitation of liability*, it is sought to uphold the jurisdiction under the Rules in Admiralty promulgated by this court in reference to the limitation of liability.

Id. at 619, emphasis added. The italicized phrase clearly implies that an express provision for district court jurisdiction in the limitation statute would have satisfied the Court as to jurisdiction.

The Court then reviewed at length the Admiralty Rules it had issued concerning limitation of liability, concluding:

> "There is nothing in any of these rules which purports to enlarge the jurisdiction of the District Courts of the United States as to subject matter. On the contrary, they exclude any such construction, and leave that jurisdiction in admiralty, within the bounds set for it by the Constitution and statutes and the judicial decisions under them. Rule 54 provides that when a vessel is libelled, or her owner is sued, he may file a libel or petition for a limitation of liability "in the proper District Court of the United States, as hereinafter specified." Rule 56 provides that in the proceeding the owner may contest his liability or that of the vessel, independently of the limitation of liability claimed, and that the opposing party may contest the right of the owner either to an exemption from liability or to a limitation of liability. What is the "proper District Court" referred to in Rule 54 and contemplated by Rule 56? It is, the court and only the court, mentioned in Rule 57, namely, the District Court *in which the vessel is libelled, or, if she is not libelled, then the District Court for any district in which the owner "may be sued in that behalf." There is nothing in these rules which sanctions the taking of jurisdiction by a District Court on a petition under the rules,*

> *where that court could not have had original cognizance in admiralty of a suit in rem or in personam to recover for the loss or damage involved.*

Id., at 623-4, emphasis added.

Further, after reviewing limitation cases previously before it and pointing out that all fell within general admiralty jurisdiction, the Court said:

> We are brought, therefore to the conclusion that there is nothing in the Admiralty Rules prescribed by this court which warrants the jurisdiction of the District Court in the present case.
>
> Our decision against the jurisdiction of the District Court is made, *without deciding whether or not the statutory limitation of liability extends to the damages sustained by the fire in question*, so as to be enforceable in an appropriate court of competent jurisdiction. The decision of that question is unnecessary for the disposition of the case.

Id., at 625, emphasis added. This left undecided the question whether the pre-1884 Limitation Act afforded protection against the suits for the fire damage if only an appropriate court could be found. Thus, the narrow grounds of the *Phenix* decision were (a) the lack of any provision in the Limitation Act for assumption of jurisdiction by the district court and (b) the circumstance that Admiralty Rules 54 and 57 provided for district court jurisdiction in terms which, the court concluded, required that limitation proceedings could be instituted only when the vessel had been libelled or her owner sued "in that behalf", the last quoted phrase being apparently interpreted as requiring the possibility of a suit *in personam* in admiralty. This last is a somewhat questionable interpretation in light of the wording of Rule 57, which distinguished between a vessel being libelled in a District Court and the owner being sued in any district, the latter possibly including a suit in a state court within the district, on a non-maritime cause of action.

Moreover, the *Phenix* Court seems to have ignored *Norwich's* reasoning, *supra*, to the effect that state courts did not have the requisite jurisdiction and that the district courts, as courts of admiralty jurisdiction, did. Accordingly, if the wording of the limitation statute had the effect of properly amending the admiralty and maritime jurisdiction by allowing claims in limitation proceedings for vessel torts consummated on land, the district court would have the requisite jurisdiction.

In any event, as noted below, many years after the decision in *Richardson v. Harmon*, *supra*, the statute and rules were amended in ways which met the *Phenix* Court's concerns, rendering them entirely academic today.[3]

Three years after *Phenix*, the Court decided *Butler v. Boston Steamship Co.*, 130 U.S. 527 (1889). That case concerned the stranding and loss of a vessel on navigable waters within a few rods of the coast of Massachusetts. The question presented was whether the Limitation of Liability Act applied to a claim for personal injury and death under a Massachusetts statute. The Court held that the Act did apply.

It observed of the basic limiting provision of the statute [R.S. 4283, now 46 U.S.C. § 183(a)]:

3 In 1936, 46 U.S.C. § 185 was amended to provide that the vessel owner may petition a district court of the United States. 44a-45a. Also the present successor to Rule 57, Rule F(9) of the Supplemental Rules for Certain Admiralty and Maritime Claims, which became effective July 1, 1966 provides in material part:

> (9) VENUE; TRANSFER. The complaint shall be filed in any district in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, *if the vessel has not been attached or arrested, then in any district in which the owner has been sued with respect to any such claim.* When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced against the owner, the proceedings may be had in the district in which the vessel may be, *but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may be filed in any district* . . . (Emphasis added.)

> . . . nothing can be more general or broad than its terms. The "*liability* . . . shall in no case exceed," etc. It is the liability not only for loss of goods, but for any injury by collision, or for any act, matter, loss, damage or forfeiture whatever, done or incurred.

Id. at 550.

After stating that the law of limited liability applied to cases of death (*id.* at 552), the Court took up the effect of the Massachusetts death statute, as follows:

> We have decided in the case of *The Harrisburg*, 119 U.S. 199, that no damages can be recovered by a suit in admiralty for the death of a human being on the high seas or on waters navigable from the seas, caused by negligence, in the absence of an act of Congress, or a statute of a State, giving a right of action therefor. The maritime law, of this country at least, gives no such right. We have thus far assumed that such damages may be recovered under the statute of Massachusetts in a case arising in the place where the stranding of the City of Columbus took place, within a few rods of the shore of one of the counties of that commonwealth; and had also assumed that the law of limited liability is applicable to that place. Of the latter proposition we entertain no doubt. The law of limited liability, as we have frequently had occasion to assert, was enacted by Congress as a part of the maritime law of this country, and therefore it is co-extensive, in its operation, with the whole territorial domain of that law . . .

Id. at 555 (citations and quotations omitted).

These quotations are believed to express the general, if not unanimous, views of the members of this court for nearly twenty years past; and they leave us in no doubt that, whilst the general maritime law, with slight modifications, is accepted as law in this country, *it is subject to such amendments as Congress may see fit to adopt.* One of the modifications of the maritime law, as

received here, was a rejection of the law of limited liability. We have rectified that. Congress has restored that article to our maritime code. We cannot doubt its power to do this. As the Constitution extends the judicial power of the United States to "all cases of admiralty and maritime jurisdiction," and as this jurisdiction is held to be exclusive, the power of legislation on the same subject must necessarily be in the national legislature, and not in the state legislatures. It is true, we have held that the boundaries and limits of the admiralty and maritime jurisdiction are matters of judicial cognizance, and cannot be affected or controlled by legislation, whether state or national. Chief Justice Taney, in *The St. Lawrence*, 1 Black, 522, 526, 527; *The Lottawana*, 21 Wall. 558, 575, 576. But within these boundaries and limits the law itself is that which has always been received as maritime law in this country, *with such amendments and modifications as Congress may from time to time have adopted.*

> It being clear, then, that the law of limited liability of shipowners is a part of our maritime code, the extent of its territorial operation (as before intimated) cannot be doubtful. It is necessarily coextensive with that of the general admiralty and maritime jurisdiction, and that by the settled law of this country extends wherever public navigation extends—on the sea and the great inland lakes, and the navigable waters connecting therewith.

Id. at 556-7, emphasis added. The Court went on to hold that, the stranding being on navigable waters of the United States, the case was clearly within the admiralty and maritime jurisdiction. The Court continued:

> It is unnecessary to consider the force and effect of the statute of Massachusetts over the place in question. Whatever force it may have in creating liabilities for acts done there, it cannot neutralize or affect the admiralty or maritime jurisdiction or the operation of the maritime law in maritime cases . . . We have no hesitation, therefore, in saying that the limited liability act applies to the present case, notwithstanding the disaster happened within the technical limits of a county of Massachusetts, and notwithstanding the liability itself may have arisen from a state law. It might be a much more serious question, whether a state law can have force to create a liability in a maritime case at all, within the dominion of the admiralty and maritime jurisdiction, where neither the general maritime law nor an act of Congress had created such a liability. On this subject we prefer not to express an opinion.

Id. at 557-8.

Thus, *Butler* held that the Limitation Act, as part of the maritime law, applied to a death claim which may have arisen under a state law although the general maritime law, in itself, gave no right of recovery in a death case.

Subsequently, in *The Hamilton*, 207 U.S. 398 (1907), the Court dealt with the question whether a Delaware death statute applied to a claim for death on the high seas, arising purely in tort, in proceedings in admiralty. The claims were presented in limitation of liability proceedings following a high seas collision between two ships belonging to Delaware corporations. At the time, death claims occurring on the high seas could not be recovered under the general maritime law.

After holding that Delaware had power to enact such legislation in respect of its corporations, the Court said:

> The first question, then, is narrowed to whether there is anything in the structure of the National Government and under the Constitution of the United States that takes away or qualifies the authority that otherwise Delaware would possess—a question that seems to have been considered doubtful in *Butler v. Boston & Savannah Steamship Co.*, 130 U.S. 527, 558. It has two branches: First, whether the state law is valid for any purpose, and, next, whether, if valid, it will be applied in the admiralty. We will take them up in order.

> The power of Congress to legislate upon the subject has been derived both from the power to regulate commerce and from the clause in the Constitution extending the judicial power to "all cases of admiralty and maritime jurisdiction." Art. 3, § 2; 130 U.S. 557. The doubt in this case arises as to the power of the States where Congress has remained silent.

Id. at 403-4.

After holding the Delaware statute valid (*id.* at 404-5) the Court continued:

> We pass to the other branch of the first question: whether the state law, being valid, will be applied in the admiralty. Being valid, it created an *obligatio*, a personal liability of the owner of the Hamilton to the claimants. *Slater v. Mexican National R.R. Co.*, 194 U.S. 120, 126. This, of course, the admiralty would not disregard, but would respect the right when brought before it in any legitimate way . . . In this case the statutes of the United States have enabled the owner to transfer its liability to a fund and to the exclusive jurisdiction of the admiralty, and it has done so. That fund is being distributed. In such circumstances all claims to which the admiralty does not deny existence must be recognized, whether admiralty liens or not. This is not only a general principle, *Andrews v. Wall*, 3 How. 568, 573; *The J. E. Rumbell*, 148 U.S. 1, 15; Admiralty Rule, 43; *Cargo Ex Galam*, 2 Moore P. C. (N.S.) 216, 236, *but is the result of the statute, which provides for, as well as limits the liability, and allows it to be proved against the fund.* The *Albert Dumois*, 177 U.S. 240, 260. See *Workman v. New York*, 179 U.S. 552, 563.

Id. at 405-6, emphasis added.

Thus, prior to the decision in *Richardson*, *supra*, this Court had held that claims not falling within the general maritime jurisdiction could be brought in a limitation of liability proceeding. And, as indicated in the italicized portion of the

passage from *The Hamilton*, *supra*, a ground for this is found in the statute, presumably R.S. § 4284, now § 184 (see 44a), which provided for the owners of damaged property receiving compensation from the limitation fund.

Richardson v. Harmon, 222 U.S. 96 (1911) was concerned with damage inflicted by a vessel on a draw-bridge, a non-maritime tort. In holding that the vessel owner was entitled to seek limitation in respect of such damage, the Court relied principally on the language of the June 26, 1884 amendment to the Act, now 46 U.S.C. § 189, 46a. Quoting extensively from *Butler*, the Court reasoned:

> The legislation is in *pari materia* with the act of March 3, 1851, 9 Stat. 635, c. 43, as carried into the Revised Statutes as §§ 4283 *et seq.*, and must be read in connection with that law, and so read, should be given such an effect not incongruous with that law so far as consistent with the terms of the later legislation. The former law embraced liabilities for maritime torts, but excluded both debts and liabilities for non-maritime torts. The section under consideration includes debts, save wages of seamen and liabilities of an owner incurred prior to the passage of the law. The avowed purpose of the original act was to encourage American investments in ships. This was accomplished by confining the owner's individual liability, when not the result of his own fault, in the instances enumerated, to his share in the ship. The same public policy is declared to be the motive of the act of which this section is a part. True, a liability may arise out of a contract as well as from a tort. But a liability *ex contractu* is included *ex vi termini*, and the addition of the words "and liabilities" would be tautology unless meant to embrace liabilities not arising from "debts." . . . In *Butler v. Steamship Company*, 130 U.S. 527, 549, 553, the words "the liability of the owner . . . shall in no case exceed," etc., were construed as extending to any liability "for any act, matter, loss, damage or forfeiture whatever, done or incurred, . . ." Upon this interpretation of § 4283,

it was held that liabilities of the owner for injuries to persons were included in the limitation, as well as injuries to goods. Referring to the eighteenth section of the act of 1884, which did not apply in that case because the injury occurred before its passage, the court said (p.553), it "seems to have been intended as explanatory of the intent of Congress in this class of legislation. It declares that the individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and freight pending. The language is somewhat vague, it is true; but it is possible that it was intended to remove all doubts of the application of the limited liability law to all cases of loss and injury caused without the privity or knowledge of the owner. But it is unnecessary to decide this point in the present case. The pendency of the proceedings in the limited liability cause was a sufficient answer to the libel of the appellants."

Id. at 103-5. The *Richardson* Court continued:

> We therefore conclude that the section in question was intended to add to the enumerated claims of the old law "any and all debts and liabilities" not theretofore included. This is the interpretation suggested in *Butler v. Steamship Co.*, *supra*. That the section operates as such an amendment of the existing law and not as a repeal of the qualifications found in that law, is the view adopted by three Circuit Courts of Appeal . . . (citations omitted)
>
> Thus construed, the section harmonizes with the policy of limiting the owner's risk to his interest in the ship in respect of all claims arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime, but leaves him liable for his own fault, neglect and contracts.

Id. at 105-6.

The Court's only reference to *Phenix* came at the conclusion of the opinion and it merely pointed out that the liability in *Phenix* arose before the passage of the 1884 Act which excluded liabilities arising before its passage. There was no discussion of *Phenix's* concern for the lack of explicit jurisdictional reference to the district court under the terms of the statute or Admiralty Rules, as discussed *supra*.

We submit that, in *Butler* and *Hamilton*, *supra*, this Court had already determined that claims not within the general maritime jurisdiction could be brought in a limitation proceeding, based on the Limitation Statute's broad language affording the shipowner the right to seek limitation against a wide variety of claims, which could be maritime or non-maritime. The unanimous *Richardson* decision was a logical adaptation of the *Hamilton* and *Butler* principles to a different species of non-maritime tort, in keeping with the practical common-sense approach of *Norwich*, *supra*.

In short, the rationale of *Phenix* becomes irrelevant if one reasons that one effect of the wording of the Limitation Act was to make a marginal adjustment in admiralty and maritime jurisdiction by allowing non-maritime claims in a limitation proceeding. And the result of *Hamilton*, *Richardson*, and other cases was practical as well. Ordinarily the great bulk of claims arising in the limitation context would be purely maritime. Some proceedings might involve both maritime and non-maritime claims; and it would defeat the objectives of *concursus* and a single fund for all claims to have proceedings in different courts. Even in those cases such as *Richardson* where the damage was inflicted solely on land the expertise of an admiralty court is useful in determining the shipowner's liability and whether it is entitled to limit that liability.

We submit that *Richardson* was soundly and rightly decided.

The passage of the Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 740, has substantially reduced the number of cases which would require invocation of the *Richardson*

doctrine. Perhaps the largest group of such cases is that represented by *Sisson*, i.e., recreational boat accidents involving more than one claimant [4] and sufficiently serious to occasion a limitation proceeding—and in which the Court considers the wrong does not have a significant connection with traditional maritime activity. If, as we have submitted, this Court should adopt a broader view of "traditional maritime activity" than the *Sisson* Court, whatever need there is to apply the *Richardson* principle would be concomitantly reduced.

If it were argued that allowing limitation for claims having no significant relationship to traditional maritime activity is unnecessary for merchant marine interests, we would point out that one purpose of the Limitation Act "was to encourage ship-building and to induce capitalists to invest money in this branch of the industry." *Norwich*, *supra*, at 121. The building of recreational craft is an important segment of the "ship-building" industry today and, as discussed below, pleasure craft are clearly included in the Limitation Act.

We submit that there is a strong federal interest in activity of vessels of all description on the navigable waters of the United States, which goes beyond interest in active navigation alone and should certainly include such cases as *Sisson*.

The broad language of the Limitation Act is obviously not limited to maritime claims. As we have seen, *supra* 13, even *Phenix* expressly refused to decide whether the limitation statute extended to the fire damage on land in that case. And this Court subsequently recognized the breadth of the statutory language in *Butler*, *Hamilton*, *Richardson*, and more recent cases, e.g., *Just v. Chambers*, 312 U.S. 383, 385-6 (1940) and *Hartford Accident & Indemnity Co. v. Southern Pacific Co.*, 273 U.S. 207, 215-6 (1927).

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4 It is important to note that the limitation injunction must be dissolved where only one claim is asserted against the shipowner, although the district court retains jurisdiction over all matters affecting the right to limit liability. *Langnes v. Greene*, 282 U.S. 531 (1931). This would permit many liability trials in state courts in single claimant cases.

Perhaps the most compelling argument against overruling or modifying *Richardson*, in addition to avoiding frustration of the language of the limitation statute, would be the consequent impairment in some cases of the district court's ability completely to dispose of a "many cornered controversy" in a single proceeding. *Just v. Chambers*, *supra* 22, at 385-7.

Finally, the principle of *stare decisis* applies here. *Richardson* and similar decisions have been accepted as correctly interpreting the limitation statutes for many years. As was said in *Patterson v. McLean Credit Union*, ____ U.S. ____, 109 S.Ct. 2363 (1989):

> . . . we have held that "any departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212, 104 S.Ct. 2305, 2311, 81 L.Ed.2d 164 (1984). We have said also that the burden borne by the party advocating the abandonment of an established precedent is greater where the Court is asked to overrule a point of statutory construction. Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done. See, *e.g.*, *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 424, 106 S.Ct. 1922, 1930-31, 90 L.Ed.2d 413 (1986); *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 736, 97 S.Ct. 2061, 2069-70, 52 L.Ed.2d 707 (1977).

Id. at 2370.

Richardson has been the law for nearly eighty years. Congress has not seen fit to alter this Court's construction of the statute, despite revisiting the subject of limitation of liability extensively in 1936. Moreover, Congress' enactment of the Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 740, in 1948, extending admiralty and maritime jurisdiction to all cases of damage to persons or property on land caused by a

vessel on navigable water, while unrelated to *Richardson*, was fully consistent with it.

We respectfully submit that *Richardson* should not be disturbed.

F. In Addition to the Wording of the Statutes and Case Law, Legislative History Confirms that the Limitation Statutes Apply to Pleasure Craft.

An underlying issue concerns whether the limitation statutes apply to pleasure craft. While the statute is clear and the leading cases cited by the parties support inclusion of pleasure craft, we think it helpful to point out a material part of the Senate Report No. 2061 on Limitation of Shipowners' Liability, May 12, 1936, 74th Congress, 2d Session (Calendar No. 2165) which states:

> The proposed subsection (f) of section 4283 [§ 183, 43a-44a] excludes from the provisions of subsections (b), (c), (d), and (e), pleasure yachts, . . . nondescript self-propelled vessels . . . [and other vessels], even though they may be seagoing vessels within the meaning of section 4289 of the Revised Statutes [§ 188, 46a]; . . . The proposed subsections (b), (c), (d), and (e) of section 4283 are made to apply only to seagoing vessels, but it was the opinion of the committee that even though the above-described vessels should be seagoing vessels, they should be exempted from the operation of the $60-per-ton minimum liability and *left under subsection (a) of section 4283, i.e., the old law*. It is not intended by the proposed subsection (f) to change in any way, by implication or otherwise, the meaning of the term "seagoing vessels", or the term "vessels used on lakes or rivers or in inland navigation", as used in section 4289, but only to limit the meaning of the term "seagoing vessels" for the purposes of the $60-per-ton minimum liability, and the provisions relating thereto.

Id. at 5, emphasis added.

The foregoing language clearly demonstrates the intent of Congress that pleasure yachts and nondescript self-propelled vessels should be included in § 183(a). In *Petition of Colonial Trust Company*, 124 F. Supp. 73 (D. Conn. 1954), the court suggested reasons:

> There is reason behind a policy of encouraging the building of pleasure craft as well as larger commercial vessels. It gives additional work to shipyards whose men are thus enabled to preserve their skills; it gives experience to those who operate the vessel on the seas and in navigable waters and, as occurred in the early part of World War II, it provides a source of small craft available for patrol and picket duty in guarding harbors and important water-front facilities in time of war or other emergency.

Id. at 75.

In any event, Congressional intent is clear.

CONCLUSION

We respectfully urge this Honorable Court to reverse the judgment of the Court of Appeals. We most respectfully request that, in doing so, this Court fashion, if practicable, a standard for admiralty and maritime jurisdiction which will promote uniformity.

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Respectfully submitted,

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